

Case No. F7469(V)

**REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

Claims 18 and 19 have been cancelled as suggested by the Office for the reasons given by the Office. No subject matter is surrendered hereby in that the addition of claims 18 and 19 was, in the view of the Office, unnecessary and they are merely cancelled to avoid redundancy.

As a merely formal matter in which no narrowing of the claim is intended, Applicants have deleted the parentheses to which the Office objected.

With respect to the Section 112 rejection of claim 1, it is submitted that the Office has not established *prima facie* that the specification is not enabling for phytosterols. The Office does not show why one of ordinary skill would be unable to apply the teachings of the invention to the compounds encompassed within the definition of phytosterols. For example, phytosterols, phytostanols and phytostanol esters have been known for similar uses in cholesterol lowering. Therefore, it is respectfully requested that the Section 112 rejection be withdrawn.

As set out in the specification, while phytosterols have been reported to lower blood cholesterol, it has also been reported that diets with an effective amount of cholesterol lowering phytosterol result in a measurable decrease in lipophilic carotenoids in the blood. The invention is directed to certain edible compositions comprising phytosterols and carotenoids to alleviate this problem and to processes for making them.

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The references cited by the Office include a cookbook which suggests that carrots can be sautéed briefly in a little butter and a patent (Hallstrom et al.) which teaches a mix for making margarine products and which include phytosterol emulsifiers. It is submitted that it is a "stretch" to select as the "butter" in the carrot recipe the particular margarine mix of Hallstrom et al., i.e., a margarine which include phytosterols as emulsifier.

The Office points to no convincing reason why one of ordinary skill attempting to make the carrot recipe would replace the butter disclosed in the recipe with a margarine made from a packaged mix of Hallstrom et al. Even though margarine may be disclosed as a butter substitute in the Hallstrom et al. reference, the carrots recipe specifies butter and it is not apparent why one of ordinary skill would select a margarine to replace the butter in the recipe since the Joy of Cooking recipe failed to suggest margarine as an appropriate alternative. Even less is it apparent why one of ordinary skill would select the specific Hallstrom et al. margarine mix, which happens to include phytosterol emulsifier.

The combination of references cited gives no hint of the present invention wherein Applicants have put forth a solution to the reported problem of carotenoid depletion. The Office points to no suggestion of this in the references. Therefore, it is respectfully requested that the rejection be withdrawn.

With respect to the Office's objection to the copy of the priority document, Section 201.14(b) of the MPEP includes the following passage:

"the certified copy which must be filed is a copy of the original foreign application with a certification by the Patent Office of the foreign country in which it was filed. Certified copies ordinarily consist of a copy of the

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specification and drawings of the application as filed with a certificate of the foreign patent office giving certain information."

The Office has provided no authority for requiring a "ribbon" on the certified copy. The Office points to no mention of a ribbon in 35 USC §119. It would be appreciated if the Office could inform the Applicants as to which authority it relies upon so that this issue can be resolved.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE****In the claims:**

Please cancel claims 18 and 19 and amend claims 7, 8 and 12 as follows:

7. (Amended) Composition according to claim 1, wherein at least 20% wt of the carotenoids is present in the form of {partly broken up} chromoplasts and/or chloroplasts.
8. (Amended) Composition according to claim 7, wherein the majority (at least 50% wt) of the carotenoids is present in the form of {partly broken up} chromoplasts and/or chloroplasts.
12. (Twice amended) Composition according to claim 1, which comprises {extracts of} processed tomato, capsicum, red peppers, watermelon, carrots, or other fruit or vegetables containing the carotenoids, in an amount of 10-99%, based on fresh weight.